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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,526	01/16/2004	Frank R. George	66672-019	7037

7590 11/15/2005

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EXAMINER

MCGILLEM, LAURA L

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/759,526	GEORGE ET AL.	
	Examiner	Art Unit	
	Laura McGillem	1636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/16/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-62 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

1. Claims 1-28, drawn to a method to accelerate the cell cycle by delivering an effective amount of electromagnetic energy to activate a cell cycle regulator, a signal transduction protein, a transcription factor, a DNA synthesis protein, or a receptor or by delivering an effective amount of electromagnetic energy to inhibit an angiotensin receptor, classified in class 435, subclass 173.8, for example.
2. Claims 29-32, drawn to a method for reducing inflammation by delivering an effective amount of electromagnetic energy, classified in class 435, subclass 173.1, for example.
3. Claim 33-52, drawn to a method for stimulating formation of a tissue or administered cells by delivering an effective amount of electromagnetic energy, classified in class 435, subclass 173.8, for example.
4. Claims 53-62, drawn to a method for monitoring progress of electromagnetic therapy by detecting levels of a cell cycle regulator, a signal transduction protein, a transcription factor, a DNA synthesis protein or a receptor and a method of modifying electromagnetic therapy by monitoring levels of said factors and proteins, classified in class 435, subclass 173.1, for example.

The inventions are distinct, each from the other because of the following reasons:

The inventions of Groups 1-4 are biologically and functionally distinct from each other and thus one does not render the others obvious. The methods of Groups 1-4

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comprise steps that are not required for or present in the methods of the other groups.

The step of reducing inflammation in neural tissue (Group 2) is not described or contemplated in the methods of Group 1 or 3-4. The steps of stimulation of growth of administered cells or formation of an artificial tissue (Group 3) are not described or contemplated in the methods of Group 1-2 or 4. The steps of monitoring progress of electromagnetic therapy by detecting levels of a cell cycle regulators, a signal transduction protein, a transcription factor, a DNA synthesis protein or a receptor and then adjusting the electromagnetic therapy according to said levels (Group 4) are not described or contemplated in the methods of Group 1-3.

The end result of these methods are different: acceleration of a cell cycle (Group 1), reduction of inflammation (Group 2), stimulation of the growth of administered cells or of a tissue (Group 3), modification of electromagnetic therapy based on levels of a cell cycle regulator, a signal transduction protein, a transcription factor, DNA synthesis protein or a receptor (Group 4). Thus, the operation, function and effects of these different methods are different and distinct from each other. Therefore, the inventions of these different, distinct groups are capable of supporting separate patents.

Because these inventions are distinct for the reasons given above and the search required for each separate group is not required for the remaining groups, restriction for examination purposes is proper. A search of each group requires a search of one or more method steps that are not required for the search of the other groups. For example, a search of Group 1 requires a search for effective amount of

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electromagnetic energy to accelerate the cell cycle and does not require a search for an the step of reducing inflammation with electromagnetic energy (Group 2), the step of stimulating growth of administered cells or a tissue (Group 3), or the step of monitoring cell cycle regulator levels and adjusting an electromagnetic therapy according to said levels (Group 4).

Claim 1 link(s) inventions 1-4. The restriction requirement among the linked inventions is subject to the nonallowance of the linking claim(s), claim 1. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

This application contains claims (claims 8, 23 and 36) directed to the following patentably distinct species of the claimed invention: fibroblast, neuronal cell, epithelial cell, macrophage, neutrophil, keratinocyte, endothelial cell, epidermal melanocyte, hair follicle papilla cell, skeletal muscle cell, smooth muscle cell, osteoblast, neuron,

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chondrocyte, hepatocyte, pancreatic cell, kidney cell, aortic cell, bronchial cell and tracheal cell.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura McGillem whose telephone number is (571) 272-8783. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

Laura McGillem, PhD
11/10/2005


DAVID GUZO
PRIMARY EXAMINER
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